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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1953.

No. 338

MOSE HIGHTOWER,
Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Mose Hightower, prays that a Writ of Certiorari issue to the Supreme Court of the State of Illinois to review the decision of that Court which affirmed the judgment of the Criminal Court of Cook County, Illinois. Petitioner was tried by a jury in the Criminal Court of Cook County and was found guilty of two counts of an indictment in four counts alleging that he dispensed narcotics in violation of the Uniform Narcotic Drug Act of Illinois, and that he had been previously convicted of a felony relating to the Federal Narcotic Laws in 1936.

Upon the jury's verdict the Trial Court sentenced the petitioner to a term of 25 to 50 years in the Illinois State Penitentiary.

The Transcript of Record in the case including the Proceedings in the Supreme Court of Illinois is furnished herewith in compliance with Rule 38 of the Rules of this Court.

STATEMENT OF MATTERS INVOLVED.

The Illinois Uniform Narcotic Drug Act was amended effective May 3, 1951. (Ill. Rev. Stat. 1951, Chap. 38, Sec. 192.23) It provided a punishment of from two years to life in the penitentiary upon conviction of a violation of the Uniform Narcotic Drug Act provided that the defendant had been previously convicted of a felony under any law of the United States or of another state "relating to narcotic drugs". The Petitioner moved to quash the indictment (Tr. 2) and moved further to strike certain portions of the indictment. (Tr. 2) Both motions were overruled before the trial. (Tr. 2)

The punishment for selling or dispensing narcotics illegally is from one to five years in the penitentiary. For a subsequent offense, as defined by the Illinois Legislature in Section 192.23, Chapter 38, Ill. Rev. Stat. 1951, an offender is subject to a punishment of from two years to life in the penitentiary. The petitioner, being 54 years of age (Tr. 3) is condemned to spend the rest of his life in the penitentiary.

Count One of the indictment charged the petitioner with selling one ounce of a narcotic drug to one Williams on December 18, 1951. Count Two of the indictment charged the petitioner with having been convicted in a Federal Court for violation of a law relating to narcotic drugs in

1936 (Tr. 1). Both of these Counts were dismissed at the close of the State's case (Tr. 2, 54) Count Three of the indictment charged the petitioner with dispensing (instead of selling) to the same individual on the same day, the same quantity of narcotics. Count Four charged the petitioner with the previous conviction. (Tr. 2, 3)

The evidence mainly consisted of the testimony of one Williams, to the effect that he received the drugs in question from the petitioner on the night in question. This witness himself was under three indictments involving the sale of narcotics (Tr. 19); and he had been previously convicted of the crime of robbery. (Tr. 16) By petitioner's plea of not guilty to the indictment he also placed into issue the matter of his previous conviction. (Tr. 2)

Petitioner himself did not take the stand and relied upon the constitutional guarantee that a defendant cannot be compelled to testify against himself.

Notwithstanding that the petitioner did not take the stand, the prosecution's whole case was based upon the previous conviction of the petitioner. The Assistant State's Attorney alluded time and again in his argument to the jury that the petitioner had been previously convicted of the same crime for which he is standing trial. (Tr. 54, 55, 56, 58, 59) The Trial Court committed a number of errors affecting the constitutional rights of the petitioner in connection with this matter. (Tr. 56, 57) The petitioner's right to a trial by jury was also violated when the Trial Court, in effect, passed judgment in front of the jury on the issue of whether or not the petitioner had been previously convicted when the matter was put in issue. (Tr. 57)

Illinois has an Habitual Criminal Act, Chap. 38, Sec. 602, Ill. Rev. Stat. 1951. Following an enumeration of

the acts for which there may be an aggravated penalty of the acts of repetition, the Illinois Legislature described the manner of pleading the former conviction as follows:

> "Provided that such former conviction or convictions or judgment or judgments shall be set forth in apt words in the indictment."

THE HABITUAL CRIMINAL ACT MAKES NO MENTION OF NARCOTIC CRIMES IN ITS ENUMERATED LIST.

The Uniform Narcotic Drug Act, heretofore cited, did not provide the manner of pleading the former conviction.

It is maintained that this provision as applied in the instant set of facts is unconstitutional and is in violation of Amendment XIV of the United States Constitution.

Petitioner alleges that he did not receive a fair trial in accordance with Due Process of Law because of the many prejudicial errors, of the drafting of the indictment, of the Prosecution tactics and of the Trial Court's instructions.

It may be pointed out that the instant prosecution commenced in February 1952 and was the first prosecution under the provision of the new Illinois Act; and to date, so far as is known, is the only such case under the Act.

JURISDICTION.

The jurisdiction of this Court is invoked under Title 28, U. S. Code, Section 1257(3) (Judiciary and Judicial Procedure, Tit. 28, Chap. 646, Public Law 773, 80th Congress).

The judgment of the Supreme Court of Illinois to be reviewed was entered on March 3, 1953; and the Petition

for Rehearing in the Supreme Court of Illinois was denied on May 18, 1953.

QUESTIONS PRESENTED.

1. When a defendant is compelled to testify against himself is it not in violation of the Fifth Amendment of the Constitution of the United States when, in a trial to determine a substantive violation of criminal law, his previous record is pleaded in the indictment where there is no State Legislative authority for the manner of pleading?

2. May the Prosecution reiterate to the jury over and over again, and even over the Trial Court's admonishment, that the petitioner had been previously convicted of the same crime 16 years before and that therefore he was guilty of the instant charge when the petitioner did not take the stand to testify?

3. May the Trial Court in effect deny the right of the petitioner to a jury trial by informing the jury that to one of the Counts of the indictment that there was no question of the petitioner's guilt—when the petitioner had plead not guilty to the Count?

4. Did not this experimental trial, being the first and only prosecution under the provision of a new Illinois law, violate the petitioner's right to a fair trial in accordance with Due Process of Law?

REASONS FOR THE ALLOWANCE OF WRIT OF CERTIORARI.

Petitioner's application for a Writ raises important questions of statutory construction and manner of pleading which go to the very heart of constitutional questions. The questions called into play here have never been de-

decided by this Court and in Illinois have only been decided in the instant case.

1. The State Court determined that certain Federal laws were narcotic laws when the Federal Courts themselves have declared that the laws in question are Internal Revenue Laws. *Nigro* v. *U. S.*, 117 F. (2d) 624, *U. S.* v. *Anthony*, 15 F. Supp. 553, 21 U.S.C. 174; 26 U.S.C. 692-696; 43 U. S. Stat. at Large 657; 44 U. S. Stat. at Large 788.

2. The 5th Amendment of the United States Constitution prevents anyone from being compelled to being a witness against himself. In the absence of specific legislative authority changing a law, a previous conviction ought not to be pleaded in the same indictment which charges a violation of a substantive offense, merely for the purpose of increasing the penalty. The dangers of abuses are great and the abuses are well exhibited in the instant case. The Federal rule, the rule in most states, the better and the fairer rule in accordance with the thinking of modern jurisprudence, hold that a prior conviction ought not to be plead in the indictment. *Graham* v. *West Virginia*, 224 U. S. 616; 58 ALR 108; 26 U.S.C. Sec. 2557; *People* v. *Manning*, 397 Ill. 358.

3. Illinois has an Habitual Criminal Act (Ill. Rev. Stat. 1951, Chap. 38, Par. 602). It sets out which offenses, being former convictions, shall be set forth in an indictment. It does not set out any violation of a narcotic law. The new narcotic law, passed in Illinois effective May 3, 1951, Chap. 38, Sec. 192.23), is completely silent on the subject; and thereby did not expand the enumeration of the crimes listed under the Illinois Habitual Criminal Act.

4. The bases of the abuse of the petitioner's right to a fair trial in accordance with Due Process of Law are so great that even the Trial Judge was caused to commit a grossly prejudicial error when it felt impelled to direct the jury, in effect, that the petitioner who had plead not guilty to the indictment was in fact guilty of one of the Counts in the indictment. The Trial Court had no right to usurp the function of the jury by so directing or indicating to the jury that the petitioner was in fact guilty of one of the Counts.

5. The whole tenor of the trial was replete with prejudice and animus because of the manner of pleading the former conviction. The trial transcript will reveal the many references to the previous convictions for the sole purpose of obtaining a conviction of the substantive offenses. This Court should issue its Writ in order to review this case and upon a review, to determine the issues in favor of the petitioner for the purpose of informing the State of Illinois that its Criminal Court ought to proceed in a manner in conformance with the requirements of a fair trial and Due Process of Law.

PRAYER.

Wherefore Your Petitioner Prays that this Court issue its Writ of Certiorari directed to the Supreme Court of the State of Illinois to the end that this cause may be reviewed and determined by this Court; and that such judgment of the Supreme Court of Illinois be reversed by this Court.

Respectfully submitted,

MOSE HIGHTOWER, *Petitioner*
By JULIUS LUCIUS ECHELES,
FRANK W. OLIVER,
His Attorneys.

JULIUS LUCIUS ECHELES,
Chicago, Illinois,
Of Counsel.

BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

OPINION BELOW.

The Opinion of the Supreme Court of Illinois is reported in 414 Illinois 537. The Petition for Rehearing was denied May 18, 1953. The said Opinion appears on pages 66 to 72 inclusive of the Transcript of Record filed herein.

JURISDICTION.

The grounds under which the jurisdiction of this Court are invoked are set forth in the Petition preceeding this Brief.

SPECIFICATION OF ERRORS.

The Supreme Court of Illinois erred in ruling contrary to the petition on each of the questions as set forth in the petition.

STATEMENT OF THE CASE.

The Petitioner herein was indicted in four counts, the first two counts charging him with selling narcotics after having previously been convicted in the Federal Courts of a felony relating to narcotic laws. (Tr. 1) These counts and charges were dismissed at the close of the State's case. (Tr. 2, 54) The third and fourth counts charged the petitioner with dispensing (rather than selling) and with having previously been convicted as aforesaid. (Tr. 2, 3) The Jury returned a verdict of guilty as to the third and fourth counts of the indictment and the Court sentenced the defendant to a term of from 25 to 50 years in the Illinois State Penitentiary (Tr. 3.)

The issues in this Petition arise out of the rulings of the Trial Court in failing to grant a Motion for a New Trial (Tr. 60, 62); out of the violation of the constitutional rights of the petitioner to have a trial by jury instead of a trial by the Trial Court as when the Trial Court, in effect, directed a verdict of guilty as to the fourth count of the indictment (Tr. 56); out of petitioner's right to have a fair trial in accordance with the Due Process Laws of the Constitution of the United States as when the Prosecution alluded time and again in the argument to the jury to the previous conviction of the petitioner as proof that he was guilty in the instant case. (Tr. 54, 55, 56, 58, 59.) It is also submitted that the manner of pleading the indictment violated the Petitioner's rights under the Fifth Amendment to the Constitution of the United States, especially where there was no specific legislative authority for the manner of pleading the alleged previous conviction.

ARGUMENT.

I.

The Illinois Uniform Narcotic Act under which the petitioner was indicted (Ill. Rev. Stat. 1951, Chap. 38, Sec. 192.23) was passed by the Illinois Legislature Effective May 3, 1951. The new act provides for increased penalties for repeated offenses of the narcotic felony laws.

The Legislature, however, failed to provide the manner of pleading alleged previous convictions. The petitioner respectfully maintains that in a case where so much prejudice is generated by virtue of the mere charge itself, that the allegation in the indictment and the presentation of evidence in support of the alleged previous conviction is completely prejudicial and fatal to any defendant on trial. In this case, the defendant did not choose to take the witness stand. Accordingly, it is maintained that he was compelled to be a witness against himself.

It cannot be denied that to plead and offer proof of a former conviction has considerable effect upon the jury in determining whether the defendant is guilty of the substantive offense for which he is on trial. See the case of *People* v. *Manning,* 397 Ill. 358 wherein it was stated:

> "Different methods of introducing the evidence of former convictions prevail in the different states. In cases such as *Graham* v. *West Virginia,* 224 U. S. 616, 32 Sup. Ct. 583, 56 L. Ed. 917, the issue of former conviction was tried *after* the guilt on the principal charge had been established. The same rule prevails in some of the other jurisdictions (See anno. 58 A.L.R. 108, and anno. supplementary thereto) In other jurisdictions the procedure is as established in this State * * * It is conceivable that the introduction of such fact might influence the jury as to

the character of the defendant and cause it to conclude that if he had been formerly convicted of a felony there was a strong probability that he was guilty of the second offense. The requirements of the law as to the degree and character of proof required to establish the principal offense are not changed, and the fact that evidence of the former conviction might create an adverse impression with the jury is not, *in view of the requirements of the Act* a denial of due process of law." (p. 361) (Emphasis added)

In this instance, the Act is completely silent about pleading the previous conviction; and the Court ought not to supply what the Legislature omitted.

The Federal Government is at least equally concerned with the State of Illinois with the prosecution of narcotic law violators. It similarly provides for aggravated punishment for second and third offenders; *but it provides for the application of the aggravated penalty in a manner not calculated to infringe upon the rights of the defendant and to prejudice his case before a Court or jury.* In an Act passed effective November 2, 1951, the Federal Government has provided for the punishment for first, second, third and subsequent offenders in a manner clear, concise, and referring specifically to particular Acts in the Federal laws which are to be considered as offenses. The Act then concludes:

> "*After conviction,* but prior to pronouncement of sentence, the Court shall be advised by the United States Attorney whether the conviction is the offender's first or a subsequent offense. If it is not a first offense the United States Attorney shall file an Information setting forth the prior convictions. The offender shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity sentence

shall be postponed for such time as to permit a trial before a jury on the sole issue of the offender's identity with the person previously convicted. If the offender is found by the jury to be the person previously convicted, or if he acknowledges that he is such person, he shall be sentenced as prescribed in this paragraph." (Title 26 U. S. Code (1951) Sec. 2557) (Emphasis added)

As a matter of fact, it was this bad pleading in the indictment which gave rise to the many errors committed during the trial. It gave rise to the many prejudicial statements of the Prosecution and of the Trial Court's error in usurping the function of the jury.

II.

The States Attorney illegally referred many times to the previous conviction of the defendant notwithstanding that the defendant did not take the stand.

The danger indicated is clearly exhibited during the trial of this cause. The prosecution was motivated by virtue of the fact that it felt its substantive case very weak on evidence, to bring out over and over again to the jury, over the objections of the defense and even contrary to the judge's admonitions, that the defendant had been previously convicted of a crime of the same nature, and that therefore he was guilty in the instant case. We submit that the prosecution built its case upon the previous conviction of the defendant.

We point out that the prosecution indicted the defendant on four counts: the first charging the defendant with selling narcotics and the second charging him with having previously been convicted of Federal laws involving narcotics; the third count charging him with dispensing narcotics and the fourth count charging the same as

the second count. (Tr. 1-2) The indictment was read to the jury. The State's Attorney must have known that there was no evidence in his possession to sustain the allegations of the selling charge. It was caused to *nolle prosse* counts 1 and 2 at the close of its case. (Tr. 54)

In the argument to the jury one of the State's Attorneys stated:

> *"You must take into consideration in arriving at your verdict* that in 1936 Mose Hightower pleaded and was found guilty in the Federal Court of the very same charge in which he is standing trial before—" (Tr. 55) (Emphasis added)

The following then occurred:

> "Mr. Echeles: If your Honor please, I move that be stricken, that the jury be instructed that there is no consideration as part of the guilt or innocence in this case.
>
> Mr. Condon: (Assistant State's Attorney) In their consideration of the evidence.
>
> Mr. Echeles: He said in their consideration of the verdict. That is—
>
> The Court: Just a minute, gentlemen, the Court will fully advise the jury by written instructions as to the effect of the prior conviction. If any counsel on either side may say to the jury anything that is different or contrary to the Court's instructions, those statements will be disregarded by the jury. The jury will confine themselves in their interpretation of the law to solely the Court's written instructions." (Tr. 55)

The above remarks of the Assistant State's Attorney were made in his opening remarks to the jury. He was only warming up. In his closing remarks the Assistant State's Attorney stated:

> "The defendant is an ex-convict, he has been so proven by the evidence that was allowed in this

record, proven that in 1936 he was an ex-convict, that he was peddling narcotics at that time." (Tr. 55)

To this there was a defense objection (Tr. 56). The Court stated:

"He may allude to it in connection with the indictment. The indictment charges him with having been previously convicted. *I think, counsel, he has been previously convicted.*" Proceed. (Tr. 56) (Emphasis added)

(As to the Court's prejudicial error, see subsequent argument)

The State's Attorney again felt impelled to call to the attention of the jury that the defendant was previously convicted, and we refer this Court to the Transcript on pp. 58 and 59 wherein it will appear that even though the Court had previously (Tr. 55) permitted the State's Attorney to tell the jury that it could take into consideration in arriving at their verdict the fact that the defendant had been previously found guilty, the Court now changed its mind; which certainly could do nothing but confuse the jury, which had heard from the State's Attorney not once, twice or three times, but a half dozen times, that the defendant had been previously convicted. The argument of the State's Attorney, the objections and the comments of the Court are as follows: (Tr. 58-59)

"Bear in mind, ladies and gentlemen, that we have proven, that there has been admitted in evidence a certified and exemplified copy of a previous conviction that back in 1936 this defendant was convicted before the Honorable Judge Wilkerson, James H. Wilkerson, the Judge of the District Court of the Northern District of Illinois; that he was convicted of violations of—that is of an indictment containing four counts, he entered a plea of guilty to four counts in

the indictment, that is to Sections 1 and 2 of the Act of December 17th, 1914, as amended and commonly called the Harrison Narcotic Drug Act as amended, it is part of the Internal Revenue Law, 26 U.S. Code Annotated 692-6, which is unlawfully purchasing and selling narcotics and narcotic drugs.

Mr. Echeles: If the Court please, I don't want to object, there is no question about this, it is not proper rebuttal, there is no question about that.

Mr. Condon: This is an argument to the Court, please, not rebuttal.

The Court: Proceed with your argument. It is conceded, gentlemen.

Mr. Condon: I just wanted to call it to their attention, I presuming, if the Court please, that this exhibit won't be allowed to go back in the jury room with them, that is why I am reading it, unlawfully purchasing and selling narcotics and narcotic drugs, in violation of the Import and Export Act, which is U. S. Code Annotated 174, concealing narcotics after unlawful importation. Now, ladies and gentlemen, *I believe the Court will instruct you that you can take into consideration in arriving at your verdict as to whether or not he has been previously convicted.*

Mr. Echeles: If your Honor please—

The Court: That is not the law. The jury will not do that. The Court will instruct the jury through written instructions that his prior conviction should not be taken into consideration in determining his guilt or innocence as to the charge in this particular indictment, dispensing narcotics. The Court will fully explain to you by written instructions the significance of the prior conviction. The jury will disregard the statement of counsel. Proceed.

Mr. Condon: Ladies and gentlemen, I am asking you at this time to return the form of verdict wherein you find the defendant guilty, and that you also find that he has been previously convicted."

Is it not plain that the former conviction was alluded to over and over again only to impress the jury? Are

the characterizations of the defendant as an "ex-convict", a "peddler of narcotics" proper characterizations under the evidence, where the defendant did not take the stand? Is all this permissible because a previous conviction has been alleged in the indictment?

In the case of *People* v. *Byrnes*, 405 Ill. 103, the defendant was convicted under the Habitual Criminal Act. He had *stipulated* to the previous conviction. There was an erroneous conclusion of law as to the effect of the stipulation in regard to his previous conviction and Supreme Court of Illinois stated on p. 107:

> "While the matter came before the jury by stipulation and without objections, the erroneous conclusion of law thereon was of sufficient purport to permeate the entire case and unduly influence and prejudice the jury against the defendant to an extent amounting to a denial of due process."

Similarly, the case of *People* v. *Perkins*, 395 Ill. 553, required a reversal where a reference to a previous conviction was permitted before the jury, but the previous conviction was improper under the Habitual Criminal Act. The Court stated:

> "Evidence of the defendant's conviction of the crime of larceny in 1929 was before the jury, as shown by the verdict returned. *This former conviction may well have induced the verdict.*" (p. 559) (Emphasis added)

With the pertinent parts of the record as quoted to this Court, is there any question of what the intent of the prosecution was? Consider how the Court permitted one State's Attorney to state to the jury that it could take into consideration in arriving at its verdict the fact that the defendant was guilty of the very same charge on which he is standing trial; (Tr. 55) consider further that

the Court permitted the State's Attorney to tell the jury that the defendant was an ex-convict and that he was peddling narcotics in 1936; (Tr. 55) and consider that finally the Court changed its mind when the State's Attorney again told the jury that it could take into consideration in arriving at its verdict the fact that the defendant was previously convicted. (Tr. 59).

The whole of the trial was characterized by the prejudice exhibited in the argument and in the Trial Judge's comments. The whole of the evidence, consisting as it did of the uncorroborated statements of an alleged accomplice, was magnified out of proportion when it was reiterated over and over again that the defendant had a previous record and therefore he ought to be convicted.

We respectfully submit that this Court ought to grant Certiorari in order to review the whole of the evidence to determine the violations which occurred of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

III.

The Trial Court had no right in a criminal case to direct a verdict of guilty to the jury.

The defendant plead not guilty to the charges in the indictment. (Tr. 1) He chose to have a jury try the facts in his case to determine his guilt or his innocence. (Tr. 2) Counts III and IV of the indictment were all that were considered by the jury after the State entered its *nolle prosse* of Counts I and II. (Tr. 2, 54) Count III charged the defendant with dispensing narcotics to one Wallace Williams in violation of the Illinois Uniform Narcotic Drug Act. (Tr. 1) Count IV charged that the defendant was the same person previously indicted and

convicted in the U. S. Courts in 1936 for violation of the Harrison Act and the Import and Export Drug Act. (Tr. 2) When the defendant plead not guilty to the indictment he put in issue all of the charges of the indictment. The State was required to prove beyond a reasonable doubt, to the satisfaction of the jury, all of the averments of the indictment.

The question of the defendant's previous conviction was an issue of fact to be tried by the jury as any other issue of fact.

We submit that the Trial Court in effect directed the jury to find defendant guilty of the charges in Count IV of the indictment when the Court stated that it believed that the defendant had been previously convicted. When the State's Attorney was making his closing argument to the jury he stated that:

> "The defendant is an ex-convict, he has been so proven by the evidence that was allowed in this record, proven that in 1936 he was an ex-convict, that he was peddling narcotics at that time." (Tr. 55)

The defense objected to these illegal and unfair statements to the jury and the Court, in ruling on the objections, stated:

> "He may allude to it in connection with the indictment. The indictment charges him with having previously been convicted. *I think, counsel, he has been previously convicted.* Proceed." (Tr. 56)

When the Court stated that the defendant was previously convicted the Court directed the jury so to find. No other reasonable conclusion can be obtained. *This was the only fact the jury was required to find in connection with the charges in Count IV.* The fact that his previous

conviction was in issue made it the jury's province to find the issue for or against the defendant, without the Court's mandatory guidance.

In several other instances the Court went outside of its province as a Trial Judge to comment on the evidence and to give one of the strangest cautionary remarks to the jury in a criminal case. On p. 56 of the Transcript it will be observed that defense counsel objects to the remarks of the State's attorney to the jury, inquiring why the defense counsel did not put his client on. The Court stated:

> "If there is any question in the jury's mind the Court will now instruct the jury as to the law at the close of the proof, that the jury is not permitted to give any consideration at all to the fact that the defendant has not testified in this case, nor should it raise any presumption against him. The defendant has the privilege not to testify and under our law no inference of guilt may be drawn from the defendant's failure to testify. *He is entitled to the presumption of innocence* WHETHER INNOCENT OR NOT." * * * (Tr. 56-57) (Emphasis added)

Coming so soon after the Court had in effect directed the jury to find the defendant guilty of the charges in Count IV of the indictment, because the Court had stated in the presence of the jury *"I think, counsel, he has been previously convicted"* (Tr. 56), the jury must certainly have obtained the impression that the Court did not presume the defendant to be innocent until proven guilty. What other reasonable interpretation could a juror, a layman to the law, obtain, when the Court states in front of the jury that the defendant is entitled to the presumption of innocence whether he is innocent or not!

We respectfully submit that after the Trial Court had presented to the jury its opinion of the guilt of the de-

fendant that the petitioner's rights to a fair trial by a jury were violated.

CONCLUSION.

By the sentence of the Trial Court the petitioner is required to spend the rest of his natural span of life in prison by virtue of the sentence imposed upon him and by virtue of his age (Tr. 3). The trial was replete with the violently prejudicial statements of the prosecutor and with the errors of the Trial Court in connection with the petitioner's alleged previous conviction. The errors in the trial arise from an attempted interpretation of the new law passed by the Illinois Legislature and never before interpreted in the Illinois Courts.

We respectfully submit that the trial, from the drafting of the indictment to the charge to the jury, was in complete derogation of the Petitioner's rights under the United States Constitution. The particular points raised here have never been decided upon by this Court; and that therefore this case requires that this Court grant its Writ of Certiorari to the Supreme Court of Illinois, and that upon a hearing of the issues make its decision known.

Respectfully submitted,

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